

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division

CYNTHIA DONN TESSLER,

Plaintiff,

v.

Civil Action No. 2:08cv234

NBC UNIVERSAL, INC.,

Defendant.

**DECLARATION OF STEPHEN E. NOONA**

I, Stephen E. Noona, hereby state:

1. I am a partner with the firm of Kaufman & Canoles, P.C., 150 West Main Street, Suite 2100, Norfolk, Virginia 23510. I am the Chair of the Trial/Litigation Section at Kaufman & Canoles, P.C. and have practiced continuously with Kaufman & Canoles, P.C. in Hampton Roads since 1985. I am counsel of record for NBC Universal, Inc. ("NBCU") in this case and have served as lead trial attorney in the matter.

2. I am an attorney in good standing with and licensed to practice in the Commonwealth of Virginia. I am admitted to practice before the United States Supreme Court, the United States Court of Appeals for the Fourth and Federal Circuits and numerous federal district courts. A copy of my current resume is attached as **Exhibit A**.

3. My whole career has been spent as a trial lawyer with the law firm of Kaufman & Canoles, P.C. Since graduating from the University of Virginia School of Law in 1985, I have tried cases in both federal and state courts for over twenty-three (23) years. My trial practice has been and continues to be concentrated in the area of intellectual property law, including cases that involve patents, copyrights and trademarks. I have handled cases both at the trial and at the

appellate levels in both state and federal courts. I have tried intellectual property matters, including copyright infringement actions and other actions involving claims surrounding copyrights, in various federal courts across the country and have considerable experience within the Eastern District of Virginia. I also have had matters in the state courts throughout the Commonwealth. I have served as an expert on the issue of attorneys' fees in intellectual property law matters in this and other courts.

4. I have served as the President of the Tidewater Chapter of the Federal Bar Association, as the Chair of the Intellectual Property Law Section for the Virginia State Bar and as a Board Member of the Intellectual Property Law Section for the Virginia Bar Association. I have been recognized by my peers for intellectual property law litigation in such publications as *Best Lawyer in America*, *Virginia Business Legal Elite*, *Virginia Super Lawyers* (top 10 and 50 lawyers lists), *Chamber USA* and other publications. I hold an AV rating from Martindale Hubbell. I am thoroughly familiar with and have lectured on several occasions upon trial practice and procedure within this Eastern District of Virginia and the state courts within the Commonwealth.

5. As a result of my experience of representing clients in the area, my longstanding practice in the courts of this area, and my position as Head of the Trial/Litigation Section at Kaufman & Canoles, P.C., I have a thorough knowledge of the rates charged by attorneys for litigating cases, including intellectual property cases, within this area in both state and federal courts. Through personal experience, including cases where claims for attorneys' fees have been made, I am familiar with and also have reviewed various background materials relating to the rates charged for and the costs associated with litigating cases, including cases involving copyright claims.

6. As indicated, I am lead counsel in this matter. In addition, I was assisted by R. Johan Conrod, who was a senior associate in this firm at the time this case began and since then, has been elected a full partner in the firm. Mr. Conrod also is a graduate of the University of Virginia School of Law, served as a law clerk to the Honorable B. Waugh Crigler in the United States District Court for the Western District of Virginia, is in good standing with the Virginia Bar, and has practiced his whole career with Kaufman & Canoles in Hampton Roads, Virginia. Mr. Conrod and I also employed the services of several associates and paralegals in representing NBCU.

7. In this matter, NBCU's in-house counsel, Hilary Lane, took an active co-counsel role, often writing the original drafts of major pleadings and supporting documents. Ms. Lane, who also has submitted a declaration in this matter, is well qualified, highly competent and has specialized experience in copyright matters. Ms. Lane took an active role in all substantive issues of the case. This increased the efficiencies and reduced the overall fees incurred in this matter.

8. This matter involved primarily a copyright infringement claim with several appended state law claims with Plaintiff seeking \$30,000,000 along with costs, attorney's fees and enhanced damages. My review of the issues considered in each of these pleadings reveals that all of the claims were based upon the same core allegations in the case. In an effort to streamline potentially lengthy and costly litigation, counsel for NBCU sought to have this matter dismissed on a Motion to Dismiss Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Although the principles applied were not novel, the application of those principles within the context of a motion to dismiss within this Circuit presented some novel issues. Both sides thoroughly briefed the issues in the matter and the Honorable Tommy E. Miller dismissed

all of the Plaintiff's claims, except a claim for breach of contract in his Report and Recommendation dated December 5, 2008. Thereafter, both parties filed limited objections to Magistrate Miller's Report and Recommendation and, this Court, on March 31, 2008, after consideration of that Report and Recommendation and the written objections of the parties, dismissed all of Plaintiff's claims.

9. I have reviewed the detailed billing invoices of Kaufman & Canoles for all of its legal services rendered and costs advanced in this matter. These invoices have been submitted to the Court as **Exhibit B** for the fees and costs claimed. Each of the charges reflected on **Exhibit B** was necessary and appropriate for defending and taken at the request of NBCU in this matter. I have billed NBCU all amounts set forth in **Exhibit B**. Additionally, attached as **Exhibit C** is a summary of the fees and costs sought and a break down by Partner, Associate and Paralegal as to the number of hours billed and rates charged in the matter. As set forth on **Exhibit C**, through the date of the last invoice in February, I have billed 69.10 hours, Mr. Conrod has billed 39.50 hours and the remaining associates and paralegals billed 21.70 hours. All of these hours and the attendant costs were incurred in defending NBCU against the Plaintiff's claims and in preparing, arguing and defending the Motion to Dismiss pleadings filed in this matter. Although listed on the invoices, we are not seeking recovery of the costs incurred for computerized legal research and have removed those costs for the summary of costs sought.

10. I expect that our firm will incur and bill NBCU additional fees and costs in the preparation and filing of this motion and the Bill of Costs for which I will submit a supplemental declaration at the appropriate time.

11. Based upon my background, experience and qualifications, it is my opinion that the rates charged by Kaufman & Canoles are reasonable and consistent with the rates charged by

attorneys in this area during the relevant periods possessing the specialized experience for complex commercial cases, including cases involving intellectual property issues and copyrights.

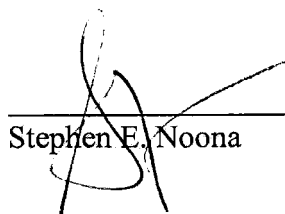
12. In addition, after considering the experience, training and skill of the attorneys and paralegals at Kaufman & Canoles who rendered legal services for NBCU in this matter, the time consumed, the effort expended, the nature of the services rendered given the complexity of the issues, the value of the services received, the result obtained, the fact that the services were necessary and appropriate and the fact that the invoices have been timely billed, the amounts charged by Kaufman & Canoles for legal fees and expenses are fair and reasonable for this case and cases of the same nature and complexity in this Court and general geographic region.

13. I note that a particularly efficient result was achieved in this case as the matter was dismissed by this Court on a motion to dismiss after extensive briefing and oral argument, a report and recommendation ("Report and Recommendation") by Magistrate Judge Tommy E. Miller, and after this Court sorted through the respective objections filed by both parties to the Report and Recommendation. This result avoided the expense of protracted discovery and other substantial litigation expenses.

14. All of the fees and costs incurred related to the copyright claim as the other claims and NBCU's defenses to those claims were derivative of the copyright claim (e.g., preemption of state law claims). As a result, this Court should award all of the fees and costs incurred. To the extent that the Court decides otherwise, I estimate that the state law claims and efforts to dismiss those claims for non-copyright law related reasons accounted for no more than ten percent (10%) of the total fees incurred.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on the 13th day of April 2009.



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Stephen E. Noona

Respectfully submitted,

/s/ Stephen E. Noona

Stephen E. Noona

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 13, 2009, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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